

Merger Enforcement Actions - 7(a) Civil Penalty Actions (FY 1996 - FY 2011)

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Matter	Enforcement Date	
1. 0810219 - John C. Malone / Discovery Holding	6 /23/2009	http://www.ftc.gov/opa/2009/06/malone.shtm John C. Malone, CEO and Chairman of Discovery Holding Company, agreed to pay a \$1.4 million civil penalty to settle Federal Trade Commission charges that he violated the Hart-Scott-Rodino Antitrust Improvements Act (HSR Act) in connection with acquisitions of Discovery shares in 2005 and 2008. The FTC alleged that Malone failed to file the required notice in 2005 after buying Discovery shares, and then in 2008 purchased additional Discovery shares before the expiration of a waiting period required by the HSR Act.
2. 0510091 - ESL Partners, L.P. / Autozone / Sears	12/15/2008	http://www.ftc.gov/os/caselist/0510091/index.shtm Enforcing the mandatory premerger notification filing provisions under the Hart-Scott-Rodino Antitrust Improvements Act, the Commission filed a complaint in Federal District Court charging ESL Partners and ZAM Holdings, two investment funds, with failing to make timely filings prior to making two acquisitions. The acquisitions in question were the purchase of blocks of AutoZone, Inc.'s shares in September and October of 2004. According to the Commission's complaint, the acquisition met the filing threshold established in the HSR act, and thus was required to file. ESL and ZAM agreed to pay civil penalties of \$525,000 and \$275,000 respectively to settle the Commission's charges.
3. 0510204 - ValueAct Capital Partners, L.P.	12/19/2007	http://www.ftc.gov/os/caselist/0510204/index.shtm In December 2007, the Commission challenged ValueAct Capital Partners' violations of the Hart-Scott-Rodino Pre-Merger Notification Act's filing requirements related to the acquisition of stock in three companies, Gartner, Inc., Catalina marketing Group, and Acxiom Corp. The firm previously violated the HSR filing requirements in 2003, and after making corrective filings, and agreeing to put HSR safeguards into place to ensure compliance with the filing requirements, the Commission decided to take no action. However, ValueAct failed to enact the necessary preventative measures and again violated the HSR filing requirements with its aforementioned acquisitions resulting in the Commission seeking civil penalties in the amount of \$1.1 million.
4. 0510184 - James D. Dondero / Motient Corporation	5 /21/2007	http://www.ftc.gov/os/caselist/0510184/index.shtm In 2007, the Commission requested that the Department of Justice file a complaint seeking civil penalties against James D. Dondero for violating the filing requirements of the Hart-Scott-Rodino Pre-Merger Notification Act. A stipulation and proposed final judgment was also filed requiring Dondero, parent of Highland Capital Management, L.P., a hedge fund, to pay \$250,000 to settle the charges. According to the Commission, Highland failed to file the appropriate premerger documents in 2003 when it acquired shares of Neighborcare, Inc, then known as Genesis Health Ventures, bringing its holdings above the \$50 million filing threshold. Upon realizing the error, a corrective filing was made, and Highland outlined steps to avoid future violations. However, in 2005, Highland reported another such violation involving shares of Motient Corporation.
5. 0410068 - Scott Sacane and Durus Life Sciences fund, LLC - Master Fund	9 /26/2005	http://www.ftc.gov/os/caselist/0410068/0410068.shtm The complaint alleged that Scott R. Sacane, a Connecticut hedge fund manager, failed to comply with notification and waiting period requirements before making acquisitions of two companies through an investment fund that he controlled. Sacane eventually held more than 50 percent of the voting securities of Aksys Ltd. and more than \$100 million of voting securities of Esperion Therapeutics, Inc., without complying with the HSR Act. Under the terms of a consent decree filed simultaneously with the suit, Sacane agreed to pay a civil penalty of \$350,000 to settle the charges.
6. 0310258 - Amgen, Inc. / Biovitrum AB	5 /3 /2004	http://www.ftc.gov/os/caselist/0310258/0310258.shtm The complaint alleged that Bill Gates, through his personal investment company, acquired more than \$50 million of the voting securities of ICOS Corporation in 2002, without complying with HSR reporting requirements. According to the complaint, he did not qualify for the "solely for the purpose of investment" HSR Act exemption because he intended to participate in the basic business decisions of ICOS, a pharmaceutical company, through among other things, his longstanding membership on its board of directors. Under the terms of a consent decree filed simultaneously with the complaint, Gates agreed to pay a civil penalty of \$800,000 to settle the charges. The case was not related to Gates' position in Microsoft Corporation or the Antitrust Division's antitrust litigation with the company.
7. 9910323b The Hearst Trust and The Hearst Corporation	10/11/2001	http://www.ftc.gov/os/caselist/9910323.shtm Hearst and its subsidiary paid a \$4 million civil penalty to settle charges that they failed to include required documents in the notification and report form file in 1998 for the proposed acquisition of Medi-Span International, Inc. The complaint alleged that the omitted documents hindered the antitrust agencies in their review and analysis of the proposed acquisition. The complaint, stipulation and final judgment were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the United States Attorney General. During fiscal year 2001, the Commission filed a related complaint for a permanent injunction alleging that Hearst and First DataBank created a monopoly through the acquisition of Medi-Span, First DataBank's only other competitor selling software and data detailing information for pharmaceutical prices, descriptions, dosages, and interactions. The Final Order and Stipulation requiring divestiture and disgorgement of profits was entered December 18, 2001.

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8. 9910027 - Intermatic Incorporated, U.S.	4 /12/1999	http://www.ftc.gov/os/caselist/9910027.shtm
Input/Output, Inc. and The Laitram Corporation each paid \$225,000 in civil penalties to settle charges that Input/Output merged its operations with Laitram's DigiCOURSE subsidiary before observing the statutory waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976. According to the complaint, the parties filed notification under HSR in October 14, 1998, but Input/Output began its control over DigiCOURSE on October 10, 1998. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General		
9. 9710012b Loewen / Prime / Blackstone	3 /30/1999	http://www.ftc.gov/opa/1999/03/blackst.shtm
A New York merchant banking fund and one of its general partners have agreed to pay nearly \$3 million to settle federal charges that they failed to file documents with the antitrust enforcement agencies in a timely manner before making an acquisition of a chain of funeral homes.		
10. 9710012a Loewen / Prime / Blackstone	3 /30/1998	http://www.ftc.gov/opa/1998/03/loewen.shtm
Loewen Group and its subsidiary paid a \$500,000 civil penalty for failure to file a notification and observe the required waiting period with the two federal antitrust agencies before acquiring voting securities of Prime Succession, Inc., valued at \$16 million. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys serving as Special Attorneys to the U.S. Attorney General.		
11. 9510113a ADP / AutoInfo	6 /18/1997	http://www.ftc.gov/opa/1997/06/adpauto3.shtm
ADP agreed to pay \$2.97 million in civil penalties for failing to include key competitive documents in a premerger filing for its acquisition of AutoInfo, Inc. The documents excluded from the filing included a marketing plan explaining how the acquisition would enable ADP to "monopolize the salvage industry." The civil penalty settlement is the third largest ever obtained for a violation of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and is also the largest ever obtained under charges for failure to submit documents required by item 4(c) of the Notification and Report Form. The complaint was filed in U.S. District Court for the District of Columbia by Commission attorneys serving as special attorneys to the U.S. Attorney.		
12. 9610085b MABEG-Mahle / Metal Leve	2 /27/1997	http://www.ftc.gov/os/caselist/9610085.shtm
Mahle, a German piston manufacturer, and Metal Leve, a Brazilian competitor, agreed to pay a record \$5.6 million civil penalty for failing to comply with the premerger notification and waiting period requirements before Mahle acquired more than a 50 percent interest in Metal Leve. The complaint, filed in the U.S. District Court for the District of Columbia by Commission attorneys, alleged that the parties knew that the transaction posed serious antitrust concerns and consummated the deal knowing that they were violating the provisions of the HSR Act. The civil penalty is the largest amount collected for a violation of this type.		
13. 9410027 - Harry Figgie HSR Compliance	2 /13/1997	http://www.ftc.gov/opa/1997/02/figgie-7.shtm
Mr. Figgie agreed to pay a \$150,000 civil penalty to settle charges that he acquired restricted voting securities in Figgie International Inc. without notifying the two federal antitrust enforcement agencies under the HSR Act. The complaint and settlement were filed in U.S. District Court for the District of Columbia by Commission attorneys serving as special attorneys to the U.S. Attorney General.		
14. 9410056 - Foodmaker Inc	8 /13/1996	http://www.ftc.gov/opa/1996/08/foodmake.shtm
Foodmaker paid \$1.45 million in civil penalties to settle charges that its Chi-Chi's subsidiary failed to comply with the notification and filing requirements under the HSR Act before it acquired Consul, Inc., operator of 26 Chi-Chi's franchises. The complaint was filed in the U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.		
15. 9410110 - Pirelli Armstrong Tire Corp	5 /7 /1996	http://www.ftc.gov/opa/1996/05/titan.shtm
Titan Wheel paid a \$130,000 civil penalty to settle charges that it acquired a Pirelli Armstrong Tire Corporation plant in Des Moines before notifying the two federal antitrust agencies and observing the statutory waiting period. According to the complaint, the parties transferred control of the Pirelli Armstrong assets three days before filing notification under the HSR Act with the Commission and the Department of Justice. The complaint was filed in the U.S. District Court for the District of Columbia by Commission attorneys acting as special attorneys to the U.S. Attorney General.		
16. 9310140 - Federated Department Stores Inc	10/19/1995	http://www.ftc.gov/os/caselist/index.shtm
A settlement was entered in the U.S. District Court for the District of Columbia requiring Federated to pay \$250,000 in civil penalties to settle charges that it violated a 1979 consent order by threatening to block a competitor from acquiring retail space in a Florence, Kentucky mall in which Federated operates a Lazarus department store.		